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Gallagher Sharp Shop Talk: Workers' Compensation

Rather than discuss a case this week, I thought I would bring to your attention a piece of proposed Ohio legislation intending to craft a uniform definition of "independent contractor."

There are many areas of the law (workers' compensation, unemployment, wage and hour, personal injury) where an "employee" can become significant. The Ohio legislature recently has begun to debate a bill (H.B. 523) which will attempt to codify a definition that would replace the current method of utilizing similar, but at times conflicting, tests as to whether a person is an "employee" or an "independent contractor." Pursuant to H.B. 523, in order to be considered an "independent contractor," the worker must establish each of the following:

1. The worker has been, and continues to be, free from the control and direction in connection with the performance of the service;
2. The worker is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the trade, occupation, profession, or business involved in the service performed;
3. The worker is a separate and distinct business entity from the entity for which the service is being performed or, if the individual is providing construction services and is a sole proprietorship or partnership, the individual is a legitimate sole proprietorship or a partner in a legitimate partnership;
4. The worker incurs the primary expenses and has continuing or recurring business liabilities related to the service performed;
5. The worker is liable for breach of contract for failure to complete the service in the time and manner prescribed;
6. An agreement, written or oral, express or implied, exists describing the service to be performed, the payment the individual will receive for performance of the service, and the time frame for completion of service; and
7. The service performed by the worker is outside of the usual course of business of the employer.

The present version of H.B. 523, which has not been brought to a vote, also contains restrictions on retaliating against worker complaints about their classification, and also prohibits a pre-dispute waiver. If you would like more information on this legislation or its progress, please contact my office.

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